

<b>STATE OF MICHIGAN</b> JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	<b>ORDER AFTER PRELIMINARY HEARING</b> <b>(CHILD PROTECTIVE PROCEEDINGS), PAGE 1</b> <b>ORDER ____ OF ____</b>	<b>CASE NO.</b> <b>PETITION NO.</b>
Court address		Court telephone no.

1. In the matter of  
name(s), alias(es), DOB

2. Date of hearing: \_\_\_\_\_ Judge/Referee: \_\_\_\_\_ Bar no.

3. Removal date: \_\_\_\_\_ (specify for each child if different)

**THE COURT FINDS:**

4. The child(ren) ☐ is/are ☐ is/are not subject to the continuing jurisdiction of another court. Court: \_\_\_\_\_

5. A petition has been submitted alleging that the above child(ren) come(s) within the provisions of MCL 712A.2(b).

6. ☐ Notice of hearing was given as required by law. ☐ Notice of proceedings is to be given as required by law.

7. ☐ a. There is probable cause to believe the legal/putative father(s) is/are: (name each child, his/her father, and whether legal or putative)

☐ b. The putative father of \_\_\_\_\_ is unknown and cannot be identified.

☐ 8. There is good cause to adjourn the preliminary hearing because \_\_\_\_\_.

☐ Petitioner recommends removal of the child(ren) from the home to assure the immediate safety of the child(ren).

☐ 9. The probable cause determination was waived by all parties present.

☐ 10. There ☐ is ☐ is not probable cause that one or more of the allegations in the petition are true.

☐ 11. There is probable cause the ☐ parent ☐ guardian ☐ legal custodian ☐ other person residing in the child(ren)'s home abused the child(ren). Presence of the alleged abuser in the home ☐ does ☐ does not present a substantial risk of harm to the child(ren)'s life, physical health, or mental well being and he/she ☐ should ☐ should not be ordered out of the home. (use form JC 65, Order Removing Alleged Abuser from Child's Home, as appropriate)

☐ 12. ☐ a. Contrary to the welfare findings were made in a prior order.

☐ b. It is contrary to the welfare of the child(ren) to remain in the home because: (attach separate sheets as necessary)

☐ 13. ☐ a. Reasonable efforts to prevent removal of the child(ren) from the home were made as determined in a prior order.

☐ b. Reasonable efforts were made to prevent removal of the child(ren) from the home. Those efforts include: (specify)

☐ c. Reasonable efforts to prevent removal of the child(ren) from the home were not made.

(SEE SECOND PAGE)

Do not write below this line - For court use only

<b>STATE OF MICHIGAN</b> JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	<b>ORDER AFTER PRELIMINARY HEARING</b> <b>(CHILD PROTECTIVE PROCEEDINGS), PAGE 2</b> ORDER ____ OF ____	<b>CASE NO.</b> <b>PETITION NO.</b>
Court address		Court telephone no.

In the matter of

- K** ☐ 14. a. Reasonable efforts are not required to prevent the child(ren)'s removal from the home due to  
☐ the ☐ mother ☐ father subjecting the child(ren) to the aggravated circumstance(s) of \_\_\_\_\_ as provided in section MCL 722.638(1) and (2), and as evidenced by \_\_\_\_\_.
- ☐ the ☐ mother's ☐ father's conviction for murder of another child of the parent.  
☐ the ☐ mother's ☐ father's conviction for voluntary manslaughter of another child of the parent.  
☐ the ☐ mother's ☐ father's conviction for aiding or abetting in the murder or manslaughter of another child of the parent, attempting to murder the child(ren) or another child of the parent, or conspiring or soliciting to commit the murder of the child(ren) or another child of the parent.  
☐ the ☐ mother's ☐ father's conviction for felony assault that resulted in serious bodily injury to the child(ren) or another child of the parent.  
☐ the ☐ mother's ☐ father's involuntary termination of parental rights to a sibling of the child(ren).
- b. Reasonable efforts to preserve and reunify the family to make it possible for the child(ren) to safely return home are  
☐ not required because the parent subjected the child or another child of the parent to one of the circumstances stated above.
- OR**  
☐ still recommended because:

(when item 14 is checked, either complete item 16 below or schedule a permanency planning hearing within 30 days of this determination)

- L** ☐ 15. ☐ a. Reasonable efforts shall be made to preserve and reunify the family to make it possible for the child(ren) to safely return home.  
☐ b. Reasonable efforts shall not be made to preserve and reunify the family because it would be detrimental to the child(ren)'s health and safety.
- M** ☐ 16. Since reasonable efforts to prevent removal or to reunite the child(ren) and family are not required, a permanency planning hearing was conducted. (**use and attach form JC 64**, Order Following Permanency Planning Hearing, Pre-Termination)
- N** 17. Conditions of custody in the home and with the individual with whom the child(ren) reside(s)  
☐ a. are adequate to safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, and mental well-being.  
☐ b. are not adequate to safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, and mental well-being.  
☐ No provision of service or other arrangement except removal of the child(ren) is reasonably available to adequately safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, and mental well-being.  
☐ Conditions of custody at the placement away from the home and with the individual with whom the child(ren) is/are placed are adequate to safeguard the child(ren)'s life, physical health, and mental well-being.

- O** ☐ 18. Parenting time with \_\_\_\_\_, even if supervised, may be harmful to the child(ren).
- P** ☐ 19. A petition to terminate parental rights of \_\_\_\_\_ has been filed, requiring automatic suspension of parenting time.
- Q** ☐ 20. The child is a member of or eligible for membership in an American Indian tribe or band named \_\_\_\_\_

\_\_\_\_\_. (**complete and mail Form JC 48**) The findings required by MCR 3.980 have been made on the record.

(SEE THIRD PAGE)

<b>STATE OF MICHIGAN</b> JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	<b>ORDER AFTER PRELIMINARY HEARING</b> <b>(CHILD PROTECTIVE PROCEEDINGS), PAGE 3</b> <b>ORDER ____ OF ____</b>	<b>CASE NO.</b> <b>PETITION NO.</b>
Court address		Court telephone no.

In the matter of

**IT IS ORDERED:**

21. The petition ☐ is authorized. ☐ is not authorized. ☐ is not authorized pending resumption of the preliminary hearing.

☐ 22. Notice is to be given to the legal/putative father(s) as required by law. ☐ The father was not present and must appear at the next hearing. ☐ The putative father was present at this hearing and shall establish paternity within 14 days.

☐ 23. The child(ren) is/are

☐ placed with the Department of Human Services for care and supervision, and

a. the parent(s), guardian, or legal custodian shall execute all documents necessary to release confidential information regarding the child(ren) including medical, mental, and educational reports, and shall also, within 7 days, provide the Department of Human Services with the name(s) and address(es) of the medical provider(s) for the child(ren). Any medical provider for the child(ren) shall release the medical records of the child(ren) to the Department of Human Services.

b. if the child(ren) is/are placed in the home of a relative, a home study shall be performed by the Department of Human Services and a copy of the home study submitted to the court not more than 30 days after the placement.

c. upon request, the Department of Human Services shall release to the foster parent the information concerning the child(ren) in accordance with MCL 712A.13a(13).

☐ released to \_\_\_\_\_ under the supervision of the Department of Human Services. ☐ The following terms and conditions apply to the parent(s), guardian, or legal custodian:

Name of parent, guardian, or legal custodian

☐ 24. Each child shall have ☐ a psychological evaluation ☐ counseling to determine appropriateness and conditions of parenting time.

☐ 25. Parenting time of \_\_\_\_\_ is

☐ supervised by the Department of Human Services and/or its designee.

☐ unsupervised at the discretion of the Department of Human Services.

☐ suspended while psychological evaluation or counseling is conducted, or until further order of the court.

☐ 26. Parenting time of \_\_\_\_\_ is

☐ supervised by the Department of Human Services and/or its designee.

☐ unsupervised at the discretion of the Department of Human Services.

☐ suspended while psychological evaluation or counseling is conducted, or until further order of the court.

☐ 27. Parenting time of \_\_\_\_\_ is

☐ supervised by the Department of Human Services and/or its designee.

☐ unsupervised at the discretion of the Department of Human Services.

☐ suspended while psychological evaluation or counseling is conducted, or until further order of the court.

☐ 28. Placement shall continue pending ☐ resumption of the preliminary hearing ☐ pretrial ☐ trial ☐ disposition

on \_\_\_\_\_ .

Date and time

☐ 29. Other:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

## MCL 722.638 - AGGRAVATED CIRCUMSTANCES

- (1) The Department shall submit a petition for authorization by the court under Section 2(b) of Chapter XIIA of 1939 PA 288, MCL 712A.2, if one or more of the following apply:
- (a) The Department determines that a parent, guardian, or legal custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included one or more of the following:
    - (i) Abandonment of a young child.
    - (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
    - (iii) Battering, torture, or other severe physical abuse.
    - (iv) Loss or serious impairment of an organ or limb.
    - (v) Life threatening injury.
    - (vi) Murder or attempted murder.
  - (b) The Department determines that there is risk of harm to the child and either of the following is true:
    - (i) The parent's rights to another child were terminated as a result of proceedings under Section 2(b) of Chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
    - (ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under Section 2(b) of Chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
- (2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the Department of Human Services shall include a request for termination of parental rights at the initial dispositional hearing as authorized under Section 19b of Chapter XIIA of 1939 PA 288, MCL 712A.19b.

### CHECKLIST FOR ADVICE OF RIGHTS AND GENERAL PROCEDURE FOR PRELIMINARY HEARING

- 1. ☐ Determine whether parent(s), guardian, or legal custodian have been notified, are present, and if not present, whether to proceed in their absence.
- 2. ☐ Determine whether the lawyer-guardian ad litem for the child is present and direct that the lawyer-guardian ad litem for the child receive a copy of the petition.
- 3. ☐ Determine whether the minor has no father as defined in MCR 3.903(A)(7) and take appropriate action as described in MCR 3.921(C).
- 4. ☐ If a respondent is present, assure that each respondent has a copy of the petition.
- 5. ☐ Read the allegations in the petition in open court unless waived by all parties present.
- 6. ☐ Determine whether the petition should be dismissed or the matter referred to alternate services; otherwise, the preliminary hearing shall continue.
- 7. ☐ Advise the respondent of the right to the assistance of an attorney.
- 8. ☐ Advise the respondent of the right to trial on the allegations in the petition and that the trial may be before a referee unless a timely demand for a jury or judge is filed.
- 9. ☐ Allow the respondent an opportunity to deny or admit allegations and make a statement of explanation.
- 10. ☐ If the hearing is held by a referee, advise the parties of the right to file a request for review of the referee's recommended findings and conclusions.
- 11. ☐ Inquire whether the child is subject to the continuing jurisdiction of another Michigan court and, if so, which court.
- 12. ☐ Inquire if the minor or either parent is a member of any American Indian tribe or band, and if so, determine the identity of the child's tribe, follow the procedures in MCR 3.980 and determine whether to continue with the preliminary hearing.
- 13. ☐ Unless the preliminary hearing is adjourned, decide whether to authorize the filing of the petition, and if authorized, whether to release the child to a parent, guardian, or legal custodian or whether to place the child out of the home as prescribed by MCR 3.965(C) and (D). **If this is the first court order authorizing removal of the child, make contrary to the welfare findings and findings regarding the efforts to prevent removal.** Reasonable efforts findings must be made now or within 60 days of the date of removal.
- 14. ☐ Advise the parent(s) when additional costs or reimbursement may be assessed.
- 15. ☐ Having ordered placement of the child outside the child's home, inform the parties of the following:
  - a. that the agency has the responsibility to prepare an initial services plan within 30 days after the child's placement.
  - b. the general elements of an initial services plan as required by the rules promulgated pursuant to 1973 PA 116, MCL 722.111 to 722.128.
    - the background of the child(ren) and the family;
    - an evaluation of the experiences and problems of the child(ren);
    - a projection of the expected length of stay in foster care; and
    - an identification of specific goals and projected time frames for meeting the goals.
  - c. that participation in an initial services plan is voluntary without a court order.
  - d. that, on motion of a party, the court will review the initial services plan and may modify the plan if it is in the best interests of the child.
- 16. ☐ Having found the alleged abuser should be ordered out of the home, complete JC 65, Order Removing Alleged Abuser from Child's Home.

## Instructions for Using JC 11a

This is the revamped order following preliminary hearing in child protective proceedings. Please note that JC 11, which was used for children who were not removed from the home, has been deleted since preliminary hearings are only held when children have been removed.

- A** 3. The removal date is key, rather than the date the petition was filed. The removal date is prominently placed to make it clear when subsequent review hearings must occur.
- B** 4. MCR 3.965(B)(8) requires a court to inquire whether a minor is subject to the continuing jurisdiction of another court.
- C** 6. Notice is an important provision because it can determine whether the court can proceed even if some important parties are not present. MCR 3.965(B)(1) allows the court to conduct the preliminary hearing in the absence of a parent, guardian, or legal custodian **if notice was given** or if the court finds a reasonable attempt to give notice was made. Notice for a preliminary hearing may be in person, in writing, on the record, or by telephone. MCR 3.920(C)(2). Notice can be waived, but the waiver must be in writing. MCR 3.920(E).
- D** 7a. MCR 3.921(C) sets out the rights and responsibilities of alleged putative fathers. MCR 3.921(C)(1) allows a court to take initial testimony on the tentative identity and address of a natural father, and to find probable cause to believe that person is the father, which then confers notice requirements.  
  
7b. This section allows the court to make a finding that the putative father is unknown, which initiates the notice by publication provisions of the rule. The notice (whether by service or publication) then allows the court to subsequently hold a hearing pursuant to MCR 3.921(C)(2) that requires a putative father to establish a legal relationship. If no father can be identified or an identified putative father fails to establish a legal relationship, the rule allows the court to proceed without further notice because the natural father cannot be identified or the natural father has not established paternity.
- E** 8. MCR 3.965(A)(1) allows a preliminary hearing to be adjourned for good cause. Further, MCR 3.965(B)(10) allows for placement to assure the immediate safety of the child, even if the preliminary hearing has not been completed. By checking this box, the court can authorize placement of the child or children even if the preliminary hearing is adjourned. If the court chooses this option, it must still make findings regarding “contrary to the welfare” and “reasonable efforts,” unless those findings were made in a previous order. Findings regarding “contrary to the welfare” must be made in the first order authorizing removal of a child from home, and “reasonable efforts to prevent removal” findings must be made within 60 days of removal.
- F** 9. MCR 3.965(B)(11) allows a probable cause determination to be waived.
- G** 10. At the preliminary hearing, the court authorizes a petition based on whether there is probable cause that one or more of the allegations in the petition are true and fall within MCL 712A.2(b). See also MCR 3.965(B)(11).

## Instructions for Using JC 11a (continued)

- H** 11. If a court wants not only to authorize a petition, but also remove an alleged abuser from the home, separate findings must be made (which is why there is a check-box before this provision). If a court wants to remove the alleged abuser, it must find probable cause that a person residing in the child's home abused the child and the alleged abuser's presence in the home presents a substantial risk of harm to the child. Both of those findings must be made to allow a court to order an alleged abuser out of the home pursuant to MCL 712A.13a(4).
- I** 12. This item relates to the "contrary to the welfare" finding a court must make to authorize placement outside the home. Federal regulations require such a finding in the first court order authorizing removal from the home for the case to be eligible for federal funding. 45 CFR 1356.21. MCR 3.965(C)(3) requires that "[i]f placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home."

This language is designed to alert anyone reading the order that one of the check boxes regarding "contrary to the welfare" findings must be checked. If the findings were made previously at the time the court authorized the child's removal (form JC 05b), check item 12a. If they were not made previously, and the court is authorizing the child's removal from the home at this time, the findings must be made at this hearing and item 12b must be checked. If the child's removal was authorized in an earlier court order (form JC 05b) and the "contrary to the welfare" findings were not made at that time, checking the box in 12b and inserting case-specific facts about why it is contrary to the child's welfare to remain in the home will not make the child eligible for funding under Title IV-E. Those findings must be made at the point at which the child is removed, not subsequently.

- J** 13. The check box before the number alerts the judge or referee that "reasonable efforts to prevent removal" findings are not required to be made at the preliminary hearing (although if they can be made, they should be made as soon as possible). Courts have 60 days from the removal date to make "reasonable efforts" findings to comply with MCR 3.965(D)(1) and to ensure federal funding for Title IV-E eligible children. The options regarding "reasonable efforts" are that: 1) they were made in a prior order, 2) they are being made in this order, or 3) they were not made (as part of a prior order or for present purposes). If the court finds "reasonable efforts to prevent removal findings" were not required, those findings are incorporated in a separate provision at item 14.

- K** 14. This provision specifically addresses the situation in which reasonable efforts, both to prevent removal and to preserve and reunify the family, are **not** required to be made. It also incorporates findings regarding the fact that reasonable efforts to reunify the family are **not** required or are still recommended. As indicated above, findings regarding "reasonable efforts to prevent removal" are not required to be made at the preliminary hearing, and therefore, item 14 is optional.

Courts are allowed to find that reasonable efforts to prevent removal are not required because the offense fits within specific federal and state exemptions to the "reasonable efforts" requirement. See MCR 3.965(D)(2); 45 CFR 1356.21(b)(3). The offenses for which a court can find that reasonable efforts to prevent removal are not required include both aggravated circumstances as defined by Michigan's Child Protection Law (MCL 722.638) as well as specific situations listed in the federal regulations.



## Instructions for Using JC 11a (continued)

The aggravated circumstances included in our state law are set forth for the court's convenience on page 4 of the form, and the federal regulations allowing for no "reasonable efforts" finding are listed in this provision. Keep in mind that finding reasonable efforts are not required *triggers the requirement that a permanency planning hearing be held within 30 days*. 45 CFR 1356.21(h)(2).

State statutes also require reasonable efforts to preserve and reunify the family unless there are aggravated circumstances. MCL 712A.19a(2). Further, the statute states that if there is a judicial determination that reasonable efforts to reunite the child and family are not required, the court must hold a permanency planning hearing within 30 days. Thus, a permanency planning hearing must be held within 30 days of a judicial determination that reasonable efforts to prevent removal or to preserve and reunify the family are not required. There is also an option in this section of the form to allow the court to require reasonable efforts to preserve and reunify the family continue, if the court finds it appropriate to do so.

- L** 15. As in the case regarding "reasonable efforts to prevent removal" findings in item 13, the court need not make findings regarding "reasonable efforts to preserve and reunify" at the preliminary hearing. Therefore, this entire item is optional. If, however, the court is making reasonable efforts findings at the preliminary hearing and item 14 is not checked, one of the options in this item must be checked because federal law regulations require that "reasonable efforts" to preserve and reunify the family, except when not required, must be made whenever a child is removed from the home. The options are that reasonable efforts to preserve and reunify shall be made or reasonable efforts to preserve and reunify shall not be made because it would be detrimental to the child(ren)'s health and safety.
- M** 16. Another option following the preliminary hearing is holding a permanency planning hearing. Item 16 is designed to be used by courts that hold a permanency planning hearing immediately after a preliminary hearing at which it found that reasonable efforts to prevent removal and reunify the family are not required. The use note makes it clear that JC 64 should also be used in this situation. Notice requirements must still be met (or a signed waiver of notice must be completed by the respondent[s]) if the court intends to hold a permanency planning hearing immediately after the preliminary hearing.
- N** 17. MCL 712A.13a(5) requires that if a petition alleges abuse by a parent, guardian, legal custodian, nonparent adult, or other person residing in a child's home, regardless of whether the court orders the alleged abuser to leave the child's home, the court shall not leave the child in or return the child to the child's home or place the child with a person unless the court finds that "the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being" Since a child has already been removed in a previous order or is being removed at this point, it is presumed that abuse has been alleged in the petition. Therefore, either a. or b. of this item must be checked.
- O** 18. MCL 712A.13a requires this finding if a court wants to order a psychological evaluation or counseling for the child. That statute also allows a court to suspend parenting time while the evaluation or counseling continues.

## Instructions for Using JC 11a (continued)

- P** 19. MCL 712A.19b(4) and MCR 3.977(D) require the automatic suspension of parenting time when a petition to terminate parental rights is filed until the termination question is settled. However, there is a check box here because the statute and court rule allow that if a court finds parenting time will not harm the child, it can order it as it deems appropriate.
- Q** 20. This provision contains specific language required by the Indian Child Welfare Act (ICWA) at 25 USC 1901 *et seq*, and MCR 3.980.
- R** 22. This provision includes the choices a court may make regarding putative fathers.
- S** 23. This provision includes options for placement with DHS for care and supervision (required for Title IV-E eligibility), or release to the child's home under supervision of DHS and with optional terms and conditions a court may order. This item is optional only because the petition may not be authorized. If the petition is authorized, one of the two options in this item must be checked.
- T** 24. This is the order provision for psychological evaluation or counseling for the child regarding parenting time (the finding in item 18 must be made to order the evaluation or counseling in this section).
- U** 25-27. These identical parenting time provisions allow the court to order parenting time (supervised or unsupervised) or to suspend parenting time while the child undergoes the psychological evaluation or counseling ordered in item 18 of this form. And while MCL 712A.19b(4) and MCR 3.977(D) require that parenting time be suspended in cases in which a petition to terminate parental rights is filed, the court can order parenting time if the parent establishes, and the court determines, that the parenting time will not harm the child. If the parent cannot establish, or the court does not determine that allowing parenting time will not harm the child, the statute requires parenting time to remain suspended until the termination petition is adjudicated or the issue is settled.
- Three separate parenting time provisions are included to accommodate different parenting time schedules, but if parenting time is the same for all parties, only one item need be filled out.
- V** 28. This item specifically states when the resumed preliminary hearing, pretrial, trial or disposition is scheduled. There is no check box, so courts will be required to fill in a specific date and time. This is designed to help keep courts moving proceedings along in a timely manner.